

REMARKS/ARGUMENTS

Claim 2 is amended to correct grammar, changing “consists” to -- consist --.
Claim 3 was incorrectly identified as “previously presented” in the claim listing of the Amendment submitted on March 24 instead of “currently amended.” The identifier has been corrected in this amendment. The amendment is identical to the one presented in the March 24, 2009 amendment. Claims 2, 3, 5-19 and 27 are pending in this application. Claims 20-22 and 24-26 are presently withdrawn without prejudice, pending potential rejoinder.

The following are additional comments on the references:

Rejection of claims 5 under 35 U.S.C. § 103(a) as being unpatentable over WO 03033592 (W’592) in view of US 3701745 (’745)

On page 4 of the Office Action dated December 24, 2009, the examiner quoted from col. 3, lines 51-59 of the ‘745 reference. As stated in this quote, the sorbitan ester of oleic acid is a “non-ionic surfactant” in the ‘745 reference. In the present application, oleic acid is not present in its ester form and does not function as a surfactant but rather is the C₆-C₂₄ fatty acid or its salt. It is not present as a non-ionic ester, rather it is present as a negative ion residue (see for example paragraph [0021] of the published application). There is a surfactant component in addition to the C₆-C₂₄ fatty acid in the present application and claims. The structure and function of oleic acid negative ion residue in the present application differs sharply from the structure and function of the non-ionic sorbitan ester of oleic acid suggested as a surfactant in the ‘745 patent.

Rejection of claim 7 under 35 U.S.C. § 103(a) as being unpatentable over WO 9941298 (WO'298; US 6685966 is English equivalent: '966) in view of US 6159381 ('381) -- page 4 of December 24, 2008 Office Action

Rejection of claim 19 under 35 U.S.C. § 103(a) as being unpatentable over WO 9941298 (WO'298; US 6685966 is English equivalent: '966) -- page 5 of December 24, 2008 Office Action

Rejection of claims 3, 11-12, 15 and 19 under 35 U.S.C. § 102(b) as being anticipated by WO 9941298 (WO'298; US 6685966 is English equivalent: '966) -- page 6 of December 24, 2008 Office Action

Rejection of claim 27 (not withdrawn claim 24) under 35 U.S.C. § 103(a) as being unpatentable over WO 9941298 (WO'298; US 6685966 is English equivalent: '966) -- page 8 of December 24, 2008 Office Action

The subject matter of WO'298 is composite particles comprising a core based on at least one organic polymer in which is dispersed at least one hydrophobic organic material and an inorganic external coating. Thus, the primary nanoparticles of WO'298 comprise organic polymers in which is dispersed hydrophobic active material, such as pharmaceutical material. These polymers derive from at least one water-immiscible ethylenically unsaturated monomer, which can be polymerized by the radical route.

On the contrary, the primary nanoparticles of the present invention comprise a fat-soluble or fat-solubilized water-soluble drug, a C₆-C₂₄ fatty acid or its salt and a surfactant. Therefore, the nanoparticles of the present invention are not the composite particles as disclosed in WO'298, and in the present invention, the organic polymer is not used for preparing the nanoparticles. Now that the claims are closed, the organic polymers have been excluded and the claims are in position for allowance.

Application No. 10/596,828
Supplemental Amendment and Response dated July 15, 2009
Supplement to Amendment After Final dated March 24, 2009

CONCLUSION

If the Examiner has any questions or suggested Examiner's amendments, the Examiner is respectfully requested to call the undersigned.

The Commissioner is hereby authorized to charge any additional fees, or to credit any overpayment, to Deposit Account No. 50-3195.

Respectfully submitted,

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